

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

19 CFR PART 122

[USCBP-2007-0064]

RIN 1651-AA41

**ADVANCE INFORMATION ON PRIVATE AIRCRAFT ARRIVING AND
DEPARTING THE UNITED STATES**

AGENCY: Customs and Border Protection, Department of Homeland Security

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes to require the pilot of any private aircraft arriving in the United States from a foreign port or location or departing the United States for a foreign port or location to transmit to Customs and Border Protection (CBP) an advance electronic transmission of information regarding each individual traveling onboard the aircraft.

This NPRM also proposes to add data elements to the existing notice of arrival requirements and proposes a new notice of departure requirement. The notice of arrival and notice of departure information would be required to be submitted to CBP through an approved electronic data interchange system in the same transmission as the corresponding arrival or departure manifest information. Under the NPRM, this data must be received by CBP no later than 60 minutes before an arriving private aircraft

departs from a foreign location and no later than 60 minutes before a private aircraft departs a United States airport or location for a foreign port or place.

Finally, this NPRM proposes to clarify landing rights procedures and departure clearance procedures as well as expressly setting forth CBP's authority to restrict aircraft from landing in the United States based on security and/or risk assessments; or, based on those assessments, to specifically designate and limit the airports from where aircraft may land or depart.

DATES: Written comments must be received on or before [insert date 60 days from publication of this document in the **Federal Register**].

ADDRESSES: You may submit comments, identified by docket number [INSERT DOCKET NUMBER], by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number.
- Mail: Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received,

go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: For Operational Matters - Michael Kaneris, Office of Field Operations, Customs and Border Protection, 202-344-1584.

For Legal Matters - Glen Vereb, Branch Chief, Office of International Trade, Regulations & Rulings, Customs and Border Protection, 202-572-8700.

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I. PUBLIC PARTICIPATION

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking.

The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal.

Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. BACKGROUND AND CURRENT REQUIREMENTS

A. Background and Authorities

Pursuant to 19 U.S.C. § 1433(c), the Secretary of Homeland Security has broad authority to regulate all aircraft, including private aircraft, arriving in and departing from

the United States. A private aircraft, in contrast to a commercial aircraft,¹ is generally any aircraft engaged in a personal or business flight to or from the United States which is not carrying passengers and/or cargo for commercial purposes. See 19 CFR 122.1(h). Specifically, § 1433(c) provides that the pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign location is required to comply with such advance notification, arrival reporting, and landing requirements as regulations may require. This statute provides CBP with the authority to deny landing rights to aircraft within the United States based on security and/or risk assessments, or based on those assessments to specifically designate and limit the airports where aircraft may land. In addition, under the statute (19 U.S.C. § 1433(d)), an aircraft pilot is required to present or transmit to CBP through an electronic interchange system such information, data, documents, papers or manifests as the regulations may require. Section 1433(e) provides, among other things, that aircraft after arriving in the United States or Virgin Islands may only depart from the airport in accordance with regulations prescribed by the Secretary. Additionally, pursuant to 19 U.S.C. §§ 1644a and 1644, the Secretary can designate ports of entry for aircraft and apply vessel entry and clearance regulations to civil aviation.

¹ 19 CFR 122.1(d) defines “commercial aircraft” as any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered. It should be noted that if either the arrival or departure leg of an aircraft’s journey is commercial, then CBP considers both legs of the journey to be commercial. 19 CFR 122.1(h) defines a private aircraft as any aircraft engaged in a personal or business flight to or from the U.S. which is not: 1) carrying passengers and/or cargo for commercial purposes; or 2) leaving the U.S. carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or 3) returning to the U.S. carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes.

B. Current Requirements for All Aircraft

1. Advance Notice of Arrival

DHS currently requires aircraft pilots of all aircraft entering the United States from a foreign area, except aircraft of a scheduled airline arriving under a regular schedule, to give advance notice of arrival. See 19 CFR 122.31(a). Advance notice of arrival must be furnished by the pilot of the aircraft and is generally given when the aircraft is in the air. As described below, the regulations set forth the general rule for advance notice of arrival for private aircraft and specific requirements for certain aircraft arriving from areas south of the United States, including aircraft from Cuba.

a. Private Aircraft Arriving in the United States

Pursuant to 19 CFR 122.22, private aircraft, except those arriving from areas south of the United States (discussed below), are required to give advance notice of arrival as set forth in 19 CFR 122.31. This notice must be given to the port director at the place of first landing by radio, telephone, or other method, or through the Federal Aviation Administration (FAA)'s flight notification procedure. 19 CFR 122.31(c). The advance notice of arrival requires information about the number of alien passengers and number of U.S. citizen passengers, but it does not require any identifying information for individual passengers onboard to be submitted.² The current regulations do not provide a specific timeframe when the notice of arrival shall be given, but direct that the pilot shall

² 19 CFR 122.31 provides that the contents of advance notice of arrival shall include the following information: (1) type of aircraft and registration number; (2) name of aircraft commander; (3) place of last foreign departure; (4) international airport of intended landing or other place at which landing has been authorized by CBP; (5) number of alien passengers; (6) number of citizen passengers; and (7) estimated time of arrival.

furnish such information far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft. 19 CFR 122.31(e).

b. Certain Aircraft Arriving From Areas South of the United States

Certain aircraft entering the continental United States from a foreign area in the Western Hemisphere south of the United States are subject to special advance notice of arrival and landing requirements. 19 CFR 122.23-24. These aircraft include all private aircraft and commercial unscheduled aircraft with a seating capacity of 30 passengers or less or maximum payload capacity of 7,500 pounds or less. Pursuant to 19 CFR 122.23(b), such aircraft are required to give advance notice of arrival to CBP at the nearest designated airport to the border or coastline crossing point listed in 19 CFR 122.24(b). These aircraft must also provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. 19 CFR 122.23(b). The pilot may provide advance notice of arrival for these aircraft by radio, telephone, or other method, or through the FAA flight notification procedure. The advance notice of arrival for such aircraft arriving from areas south of the United States must include the information listed in 19 CFR 122.23(c).³ Aircraft arriving from areas south of the United States that are subject to the requirements of 19 CFR 122.23 are required to land at designated airports

³ Section 122.23(c) provides that the contents of the advance notice of arrival shall include the following: (1) aircraft registration number; (2) name of aircraft commander; (3) number of U.S. citizen passengers; (4) number of alien passengers; (5) place of last departure; (6) estimated time and location of crossing U.S. border/coastline; (7) estimated time of arrival; and (8) name of intended U.S. airport of first landing, as listed in §122.24, unless an exemption has been granted under §122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by CBP officers in the U.S. Virgin Islands.

listed in 19 CFR 122.24(b), unless CBP grants an exemption from the special landing requirement.⁴

c. Aircraft Arriving From Cuba

The current regulations require private aircraft entering the United States from Cuba, except for public aircraft,⁵ to give advance notice of arrival at least one hour before crossing the U.S. border or coastline. 19 CFR 122.152 and 122.154. This notice must be furnished either directly to the CBP Officer in charge at the relevant airport listed in 19 CFR 122.154(b)(2), or through the FAA flight notification procedure. The advance notice of arrival for aircraft from Cuba must include the information listed in 19 CFR 122.154(c).⁶

2. Permission to Land (Landing Rights)

The current regulations require the owner or operator of any aircraft, including a private aircraft, arriving at a landing rights airport or user fee airport to request permission to land – known as landing rights – from CBP (19 CFR 122.14(a) and 122.15(a)). A “landing rights airport” is defined as any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by CBP to land. See 19 CFR 122.1(f). A “user fee airport” is defined as an airport so designated by CBP and flights from a foreign area may be granted permission

⁴ 19 CFR 122.25 sets forth the procedures concerning exemption from special landing requirements – known as an overflight privilege.

⁵ 19 CFR 122.1(i) defines “public aircraft” as any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the U.S. from arrival, entry and clearance requirements similar to those provided in subpart C of this part, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes.

⁶ 19 CFR 122.154(c) provides that the contents of advance notice of arrival shall state: (1) Type of aircraft and registration number; (2) Name of aircraft commander; (3) Number of U.S. citizen passengers; (4) Number of alien passengers; (5) Place of last foreign departure; (6) Estimated time and location of crossing the U.S. coast or border; and (7) Estimated time of arrival.

to land at a user fee airport rather than at an international airport or a landing rights airport. See 19 CFR 122.1(m). An informational listing of user fee airports is contained in § 122.15. Permission to land must be secured from the director of the port, or his representative, at the port nearest the first place of landing for both landing rights airports and user fee airports. However, the current regulations do not set forth a precise application procedure or timeframe for securing permission to land.

C. Current Requirements for Commercial Aircraft

In contrast to private aircraft, commercial air carriers are required to electronically transmit passenger arrival manifests to CBP no later than 15⁷ minutes (19 CFR 122.75a(b)(2)) after the departure of the aircraft from any place outside the United States (19 CFR 122.49a(b)(2)) and passenger departure manifests no later than 15 minutes prior to departure of the aircraft from the United States.. Manifests for crew members on passenger flights and all-cargo flights and manifests for non-crew members on all-cargo flights must be electronically transmitted to CBP no later than 60 minutes prior to the departure of any covered flight to, continuing within, or overflying the United States (19 CFR 122.49b(b)(2)) and no later than 60 minutes prior to the departure of any covered flight from the United States. 19 CFR 122.75b(b)(2).

Commercial air carriers transmit passenger information to CBP through the Advance Passenger Information System (APIS) which is an electronic data interchange

⁷ CBP published a final rule in the **Federal Register** on August 23, 2007 (72 FR 48320), which amends its regulations regarding the electronic transmission of manifest data by commercial air carriers bound for and departing the United States, to require the APIS transmission 30 minutes prior to securing of the aircraft doors (APIS 30 interactive and non-interactive) and up to the time the aircraft doors are secured for APIS Quick Query (AQQ) transmissions. This rule takes effect February 19, 2008.

system⁸ approved by DHS for use by international commercial air and vessel carriers. By receiving the advance passenger and crew information, CBP is able to perform enforcement and security queries against various multi-agency law enforcement and terrorist databases in connection with international flights to and from the United States. Based on the manifest reporting requirements for commercial air carriers, CBP currently has the capability to review advance information on commercial air travelers to assess potential risks.

This proposed rule allows for a risk assessment of all private aircraft traveling internationally and will aid CBP in obtaining advance information so that risk analyses may be conducted before the departure of private aircraft bound for or departing the United States in an effort to improve border security. This rule serves to provide the nation, private aircraft operators, and the international traveling public, additional security from the threat of terrorism and enhance CBP's ability to carry out its border enforcement mission.

III. PROPOSED REQUIREMENTS

Private aircraft operators currently do not electronically transmit to CBP advance notice of arrival through an approved electronic data interchange system. In addition, private aircraft, unlike commercial aircraft, are not presently required to electronically transmit passenger arrival and departure manifests that provide identifying information for individuals onboard the aircraft before arriving in or departing from the United States.

⁸ A DHS-approved electronic data interchange system is any electronic system that is approved by DHS that allows the public to interface with DHS for the purposes of transmitting required information. CBP anticipates that most transmissions will be made using eAPIS which is an example of such an application and is an application that is available through the internet. The pilot may choose to authorize an agent to transmit the data if internet access is not available at the pilot's location or for other reasons of convenience. The pilot remains responsible for the timing and accuracy of the transmission

CBP regulations do not contain precise procedures for a private aircraft operator to follow to request permission to land at landing rights airports. Private aircraft operators are also currently not required to provide notice of departure or obtain clearance prior to departing the United States.

Accordingly, CBP's current regulations do not provide CBP with the necessary information to fully assess potential threats posed by private aircraft entering into and departing from the United States. To adequately and accurately assess potential threats posed by private aircraft entering and departing the United States, CBP needs sufficient and timely information about the impending arrival or departure of a private aircraft, the passengers and crew onboard, and clear procedures regarding landing rights and departure clearance. Without these tools, CBP currently lacks the capability to perform risk assessments on passengers traveling on private aircraft.

Under this rule, CBP is proposing regulatory changes that include requiring the advance electronic information of notice of arrival combined with passenger manifest data for those aboard private aircraft that arrive in and depart from the United States. Additionally, this rule proposes amendments regarding notice of arrival requirements, landing rights, and departure requirements.

The proposed changes would provide CBP with more detailed information about arriving and departing private aircraft and persons onboard within a timeframe that would enable CBP to more fully pre-screen information on all individuals intending to travel onboard private aircraft to or from the United States. As a result, CBP would more accurately assess the risks that certain flights may pose to national security and take appropriate action. Moreover, these changes would enable CBP to minimize potential

threats posed by private aircraft by identifying high-risk individuals and aircraft and allowing CBP to coordinate with airport personnel and domestic or foreign government authorities to take appropriate action when warranted by a threat.

A. General Requirements for Private Aircraft Arriving in the United States

This rule proposes to add new passenger manifest and departure requirements and to revise existing notice of arrival and landing rights requirements for private aircraft arriving in the United States from a foreign location or departing the United States to a foreign location.

1. Notice of Arrival

This NPRM proposes to require pilots of private aircraft arriving in the United States from a foreign port or location to transmit notice of arrival information to CBP through a CBP approved electronic data interchange system no later than 60 minutes prior to departure from a foreign port or location. “Departure” would be defined as “the point at which the aircraft is airborne and the aircraft is en route directly to its destination.” See proposed § 122.22(a). Under this proposed rule, aircraft that are not originally destined for the United States but are diverted to the United States due to an emergency would be required to transmit an arrival manifest no later than 30 minutes prior to arrival, although the circumstances of the emergency situation and whether or not the aircraft is equipped to make the transmission will be taken into consideration by CBP.

This NPRM also proposes expanding the data elements that private aircraft operators are required to report in the notice of arrival. The current contents of notice of arrival reporting for private aircraft require that the following data elements be submitted by telephone, radio or other method: type of aircraft and registration number, name of

aircraft commander, place of last foreign departure, international airport or intended landing or other place at which landing has been authorized by CBP, number of alien passengers, number of citizen passengers and estimated time of arrival. This rule proposes to clarify the existing notice of arrival reporting requirements for private aircraft by duplicating the data elements provided in 19 CFR 122.31, which apply to all aircraft (including private aircraft), into 19 CFR 122.22, which applies specifically to private aircraft. This NPRM also proposes to expand the data elements for notice of arrival regarding private aircraft. The proposed data elements for notice of arrival report include the following: aircraft registration number, decal number, place of last departure, aircraft tail number, aircraft call sign, aircraft type, date of aircraft arrival, complete itinerary, estimated time of arrival, estimated time and location of crossing the U.S. border/coastline, name of intended airport of first landing, owner/lessee name and address, pilot license number, pilot address, country of issuance of pilot's license, transponder code, color, operator name and address, and 24-hour point of contact.

2. Arrival Manifest Data Requirement

This NPRM proposes that private aircraft pilots arriving in the United States would be responsible for submitting manifest data that provides identifying information for all individuals on board the aircraft no later than 60 minutes prior to departure from a foreign port or location. This manifest data would be provided simultaneously with the notice of arrival information and would include the following information for all individuals onboard the aircraft: full name; date of birth; gender; citizenship; country of residence; status on board the aircraft (i.e., passenger or crew member); travel document type; travel document number; travel document country of issuance; travel document

expiration date; alien registration number, redress number (if available),⁹ and address while in the United States.

The pilot collecting the manifest information would be required to compare the manifest information with the information on the DHS approved travel document presented by each individual attempting to travel onboard the aircraft to ensure that the manifest information is correct, that the travel document appears to be valid for travel to the United States, and the traveler is the person to whom the travel document was issued.¹⁰ If additional passengers not included in the manifest arrive after the manifest data was submitted to CBP, the pilot would be responsible for submitting a corrected manifest. The pilot would be required to await CBP approval of the corrected manifest before departing. Additionally, any approval to land at a United States airport or location from a foreign port or location that was previously granted by CBP as a result of the original manifest's submission would be invalidated. If a subsequent manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must resubmit the arrival manifest and receive approval from CBP for the amended manifest containing the added or amended information before allowing the aircraft to depart the foreign location, or the aircraft may be, as appropriate, denied clearance to depart, diverted from arriving in the United States, or denied permission to land in the United States. Certain private aircraft may also be subject to the Transportation Security Administration (TSA) security and boarding requirements for large aircraft including those contained in 49 CFR 1544.

⁹ The redress number is the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

¹⁰ Further information outlining the various types of travel documents approved by DHS can be found at: http://www.cbp.gov/linkhandler/cgov/travel/inspections_carriers_facilities/doc_require.ctt/doc_require.pdf

3. Method of Transmitting Information to CBP

Under this proposed rule, both the notice of arrival information and manifest data must be transmitted in the same transmission via electronic submissions through the Electronic Advance Passenger Information System (eAPIS)¹¹ web portal or by a CBP approved alternative transmission medium. More information on eAPIS is available at <http://www.cbp.gov> (related links). Under this proposed rule, any electronic data interchange system approved by CBP would be an acceptable method for private aircraft to submit notice of arrival information and manifest data. The pilot would be responsible for submitting this information, but could authorize another party to submit the information on his or her behalf. After CBP receives the submitted information, DHS would send a message to the submitter of the manifest information before departure from a foreign airport indicating that the information has been received and specifying whether landing rights have been granted at the requested airport, granted at a different airport designated by CBP, or denied. There will be a transitional period during which the current manual process of requesting landing rights will gradually be replaced by this automated procedure.

A private aircraft pilot who chooses not to transmit required arrival manifest data by means of a CBP-approved interactive¹² electronic transmission system would be required to make batch manifest transmissions by means of a non-interactive electronic

¹¹ eAPIS is an online transmission system that meets all current and future APIS data element requirements for all mandated APIS transmission types.

¹² CBP anticipates that most pilots of private aircraft will use the eAPIS web portal as the transmission method of choice because of the ease and availability of internet access. Electronic EDIFACT transmissions are currently used by commercial carriers to transmit passenger data to CBP. Pilots of large business aircraft could choose to use this or other CBP-approved electronic transmission medium rather than the eAPIS portal.

transmission system approved by CBP. The private aircraft pilot would make a single, complete batch manifest transmission containing all the required arrival manifest data for every person on the aircraft.

After receipt of the manifest information, as in the case where the manifest information is conveyed using a CBP-approved interactive electronic transmission system, CBP would perform an initial security vetting of the data and grant, deny, or restrict landing rights as appropriate.

Through an analysis of the data provided by the pilot's transmission, DHS will be able to identify passengers who are designated as selectee or no-fly. This and other information will be used in determining whether landing rights or clearance will be granted, restricted or denied. DHS is evaluating whether to inform the pilot, in the event that CBP denies or restricts landing rights for the plane, which passenger(s) has been identified by DHS on the selectee or no-fly lists so that the pilot may better understand potential threats to the security of the aircraft. In addition, such notification could avoid additional flight delays or disruptions by allowing the pilot to remove that individual from the flight until such time as the individual resolves the selectee or no-fly designation with TSA under TSA's redress system. Accordingly, DHS is soliciting public comments on the economic costs and benefits of notifying a pilot about an individual selectee or no-fly match being aboard the aircraft. DHS is also seeking comments on any operational and privacy concerns associated with sharing such information.

B. Certain Aircraft Arriving from Areas South of the United States

This NPRM proposes a new timeframe for reporting notice of arrival, which would be no later than 60 minutes prior to the aircraft's departure to the United States

from a foreign port or location, as opposed to 60 minutes before crossing the U.S border as is the current requirement. Under this proposed rule, notice of arrival would be required, along with manifest data be furnished as set forth in 19 CFR 122.22 for private aircraft, which requires submission of such information to CBP via an electronic data interchange system approved by CBP. All other aircraft subject to 19 CFR 122.23, would be required to report notice of arrival as required under that provision.

This NPRM also proposes to correct a discrepancy between the definition of “private aircraft” in 19 CFR 122.23, which encompasses both private aircraft and, in some instances, small, unscheduled commercial aircraft and the general definition provided for “private aircraft” in 19 CFR 122.1(h). To correct this discrepancy, CBP is proposing to revise the heading for 19 CFR 122.23 to read “Certain aircraft arriving from areas south of the U.S.” Additionally, the proposed regulatory text would expressly state the specific types of aircraft to which the section applies rather than defining them. These proposed amendments to 19 CFR 122.23 would make the section easier for the public to understand.

C. Notice of Arrival for Private Aircraft Arriving from Cuba

This NPRM proposes that private aircraft arriving from Cuba, as provided for in 19 CFR 122.154, would be required to provide notice of arrival and manifest data in the same manner as private aircraft that are subject to proposed 19 CFR 122.22. Private aircraft arriving from Cuba would continue to be required to provide notice of arrival information to the specifically designated airport where the aircraft will land: Miami International Airport, Miami Florida; John F. Kennedy International Airport, Jamaica, New York; or Los Angeles International Airport, Los Angeles, California.

D. Private Aircraft Departing the United States

1. Departure Manifest Data Requirement

This NPRM proposes to require the pilot of a private aircraft departing the United States to a foreign port or location to submit a departure manifest to CBP. Similar to the arrival manifest, the departure manifest would contain information identifying all individuals onboard the aircraft. The timeframe for submission of the departure manifest would be no later than 60 minutes prior to departure from the United States to a foreign port or location. This NPRM clarifies the pilot's responsibility to ensure that a departure manifest regarding all individuals onboard the private aircraft is submitted and specifies that the transmission of the manifest data must be through any CBP approved electronic data interchange system. The information to be provided in the departure manifest would be the same as that provided in the arrival manifest.¹³

Under this proposed rule, the pilot collecting the information would be responsible for comparing the travel document presented by each individual attempting to travel onboard the aircraft with the DHS approved travel document information he or she is transmitting to CBP. The pilot would also be responsible for ensuring that the information is correct and that the traveler is the person to whom the travel document was issued.

This NPRM clarifies that if a departure manifest is submitted to CBP before all individuals arrive for transport, the pilot must resubmit an amended manifest with all

¹³ Like the arrival manifest, the departure manifest would include the following information for all individuals onboard the aircraft: full name; date of birth; gender; citizenship; country of residence; status on board the aircraft (i.e., passenger or crew member); travel document type; travel document number; travel document country of issuance; travel document expiration date; alien registration number, redress number if available and address while in the United States.

required information, and any clearance previously granted by CBP as a result of the original manifest's submission would be invalidated. The pilot would have an obligation to make necessary changes to the departure manifest and specifies what circumstances would constitute necessary changes (e.g., adding a name or any required information or amending previously submitted information). If changes are submitted less than 60 minutes prior to departure, the pilot would be required to receive a new clearance from CBP before departing.

2. Notice of Departure

This NPRM proposes to require private aircraft leaving the United States for a foreign port or location to obtain clearance from CBP prior to departing from the United States. Under this proposed rule, private aircraft pilots departing for a foreign port or location would be required to submit an electronic departure manifest on all individuals onboard the aircraft, and notice of departure information no later than 60 minutes prior to departure. Notice of departure elements would constitute the following information: aircraft registration number, type of aircraft, call sign (if available), decal number, place of last departure, date of aircraft departure, estimated time of departure, estimated time and location of crossing U.S. border/coastline, name of intended foreign airport of first landing, owner/lessees name, (last, first, and, if available, middle), owner/lessees street address, (number and street, city, state, zip code, country, telephone number, fax number, and email address), pilot/private aircraft pilot name (last, first and, if available, middle), pilot license number, pilot street address: (number and street, city, state, zip code, country, telephone number, fax number and email address), country of issuance of pilot's license, operator name (last, first, and if available, middle), operator street address:

(number and street, city, state, zip code, country, telephone number, fax number and email address), 24-hour point of contact (e.g., broker, dispatcher, repair shop) name, transponder code (beacon number), color, complete itinerary (intended foreign airport destinations for 24 hours following departure).

3. Aircraft Required to Clear

The existing regulatory language in 19 CFR 122.61 exempts public and private aircraft from leaving the United States for a foreign area from having to obtain clearance prior to departing from the United States. As such, CBP is proposing to revise paragraph (a) of § 122.61 to indicate that private aircraft leaving the United States for a foreign area are required to obtain clearance from CBP as set forth in the language proposed for § 122.26. The paragraph will further state that all other aircraft, except public aircraft, leaving the United States or the U.S. Virgin Islands are required to clear if they carry passengers and/or merchandise for hire or take aboard or discharge passengers and/or merchandise for hire in a foreign area. See 19 CFR 122.61(a) and (b). These proposed changes are necessary to effectuate the new requirements regarding the filing of a departure manifest and electronic clearance for private aircraft prior to departure for a foreign port or place.

The process of receiving electronic clearance to depart would operate in substantially the same manner as submission of an arrival data manifest. Prior to departing the United States, a private aircraft pilot would submit departure manifest data on all individuals onboard the aircraft, await CBP's confirmation of receipt of the manifest data, and await CBP clearance to depart the United States. CBP's clearance,

i.e., permission to depart the United States, would be transmitted to the pilot from CBP via an electronic data interchange system approved by CBP.

As with the transmission of arrival data manifests, a private aircraft pilot that chooses not to transmit required notice of departure, departure manifests by means of a CBP-approved interactive electronic transmission system must make batch manifest transmissions in accordance with CBP policy as discussed earlier in section III.A.3., entitled “Method of Transmitting Information to CBP.”

E. Landing Rights

CBP currently requires all aircraft arriving at a landing rights airport to request permission to land, known as landing rights, from CBP. Given CBP’s authority to deny landing rights within the United States and to restrict landing to airports designated by CBP,¹³ this NPRM proposes to expressly state CBP’s authority to deny permission to land in the United States and/or limit aircraft landing locations.

1. Landing Rights Airports

The current provisions of 19 CFR 122.14 do not adequately provide for when or how the request for permission to land at a landing rights airport should be given to the director of the port of entry or station nearest the first place of landing. Under this proposed rule, private aircraft pilots would seek permission to land at a landing rights airport when the notice of arrival information is transmitted via a CBP approved electronic data interchange system no later than 60 minutes prior to departure from a foreign port or place pursuant to the proposed language in 19 CFR 122.22. The pilot would then be required to wait for CBP to transmit a message that landing rights have been granted at the particular landing rights airport. These requirements would also

¹³ See 19 U.S.C. 1433(c) and 1644a(b)(1)(A).

apply to private aircraft landing at user fee airports pursuant to 19 CFR 122.15. This proposed rule would also expressly provide that CBP may deny landing rights or direct an aircraft to a landing location.

2. Aircraft Required to Land

This NPRM proposes to clarify CBP's authority to deny permission to land in the United States and to designate the specific locations at which unusually high-risk aircraft may land. Currently under 19 CFR 122.32, any aircraft that is coming into the United States from a foreign location (including Puerto Rico) must land unless exempted by the Federal Aviation Administration. This proposed rule would expressly provide that CBP's authority to deny permission to land in the United States, in addition to the current FAA exemption excusing the requirement to land, as the two exclusive reasons that an aircraft coming into the United States from a foreign area shall not land in the United States.

V. REGULATORY ANALYSES

A. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is not "economically significant" under Executive Order 12866 because it will not result in the expenditure of more than \$100 million in any one year. The Office of Management and Budget (OMB) has reviewed this rule under that Order. Comments regarding the analysis may be submitted by any of the methods described under the "Addresses" section of this document.

Currently, pilots of private aircraft must submit information regarding themselves, their aircraft, and any passengers prior to arrival into the United States from a foreign airport. Depending on the location of the foreign airport, the pilot provides the arrival information 1 hour prior to crossing the U.S. coastline or border (areas south of the

United States) or during the flight (other areas). The information that would be required for the pilot is similar to what is already required; it would need to be submitted earlier (60 minutes prior to departure). No notice of departure information is currently required for private aircraft departing the United States for a foreign airport.

CBP estimates that 138,559 private aircraft landed in the United States in 2006 based on current notice of arrival data. These aircraft collectively carried 455,324 passengers; including the 138,559 pilots of the aircraft, this totals 593,883 individuals arriving in the United States aboard private aircraft. CBP estimates that approximately two-thirds are U.S. citizens and the remaining one-third is comprised of non-U.S. citizens.

Table 1 summarizes the 2006 arrival information for the top airports in the United States that receive private aircraft from foreign airports. Fort Lauderdale received the most arrivals, with nearly 10 percent of the U.S. private aircraft arrivals. The top 18 airports received approximately 60 percent of the total. As shown, the average number of passengers per arrival varies by port; JFK has the highest passengers per arrival (4.7) while Bellingham, Washington, has the lowest (1.4). Nationwide, the average number of passengers carried per arrival is 3.3.

Table 1: Summary of Arrivals and Passengers Aboard Private Aircraft (2006)

Airport	Aircraft/Pilot Arrivals	Percent of Total Aircraft	Passenger Arrivals	Percent of Total Passengers	Average Passengers per Arrival
Ft. Lauderdale Intl. Airport, FL	12,831	9%	37,848	8%	2.9
West Palm Beach, FL	9,031	7	25,109	6	2.8
New York-Newark, Newark, NJ	6,464	5	29,779	7	4.6
Miami Airport, FL	5,676	4	17,596	4	3.1
Fort Pierce, FL	5,216	4	11,376	2	2.2
Otay Mesa, CA	4,944	4	18,216	4	3.7
San Juan, PR	4,090	3	10,821	2	2.6
Hidalgo, TX	3,827	3	8,647	2	2.3
Calexico, CA	3,597	3	7,963	2	2.2
JFK Airport, NY	3,497	3	16,492	4	4.7
Laredo, TX	3,280	2	10,974	2	3.3
Tucson, AZ	3,013	2	9,059	2	3.0
El Paso, TX	2,548	2	9,544	2	3.7
Houston/Galveston, TX	2,534	2	10,850	2	4.3
Seattle, WA	2,529	2	6,238	1	2.5
Brownsville, TX	2,303	2	7,027	2	3.1
San Antonio, TX	2,185	2	8,520	2	3.9
Bellingham, WA	2,160	2	3,106	1	1.4
Remaining 223 airports	58,834	42	206,159	45	3.5
Total	138,559	100	455,324	100	3.3

CBP does not currently compile data for departures, as there are currently no requirements for private aircraft departing the United States. For this analysis, we assume that the number of departures is the same as the number of arrivals.

Thus, we estimate that 140,000 private aircraft arrivals and 140,000 departures will be affected annually as a result of the rule. While the current data elements for pilots are very similar to the proposed requirements, the data elements for passengers are more extensive. Based on the current information collected and accounting for proposed

changes in the data elements, CBP estimates that one submission, which includes the arrival information and the passenger manifest data, will require 15 minutes of time (0.25 hours) for the pilot to complete. Additionally, CBP estimates that it will require each of the 460,000 passengers 1 minute (0.017 hours) to provide the required data to the pilot. These data are all contained on a passenger's passport or alien registration card and are thus simple to provide to the pilot.

Currently, arrival information is submitted by radio, telephone, or other method, or through the FAA's flight notification procedure. Under the proposed requirements, pilots must submit the arrival and passenger data through the eAPIS web portal, electronic EDIFACT transmissions, or an approved alternative transmission medium. For this analysis, we assume that pilots will use the eAPIS system, as it is a user-friendly and costless method to submit the required data elements to CBP, and the pilot need only have access to a computer with web capabilities to access the system. We also assume that pilots will have access to a computer and the internet to make the electronic submission. This analysis in no way precludes a private aircraft operator from implementing another approved method of transmission; however, we believe that most pilots, particularly those not traveling for business, will choose to submit the required data through the least-cost option: eAPIS.

Currently, private aircraft arriving from areas south of the United States must provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. There are no such timing requirements for other areas. Thus, some pilots and their passengers may decide that in order to comply with the new requirements, including submitting information through eAPIS and waiting for a response from CBP, they must

convene at the airport earlier than they customarily would. We do not have any information on how many, if any, pilots or passengers would need to change their practices. For this analysis, we assume that 50 percent of the pilots and passengers would need to arrive 15 minutes (0.25 hours) earlier than customary. This would result in 70,000 affected pilots (140,000 arrivals * 0.5) and 231,000 affected passengers (70,000 arrivals * 3.3 passengers per arrival) for a total of 301,000 individuals affected.

To estimate the costs associated with the time required to input data into eAPIS, we use the value of an hour of time as reported in the Federal Aviation Administration's (FAA) document on critical values, \$37.20.¹⁴ This represents a weighted cost for business and leisure general aviation travelers. CBP believes this is a reasonable approximation of the average value of a pilot's and traveler's time. However since this estimate may be an underestimate of the value of time for general aviation passengers and pilot's engaged in international travel , CBP requests comments on this estimate.

The cost to submit advance notice of arrival data through eAPIS would be approximately \$1.3 million (140,000 arrivals * 0.25 hours * \$37.20 per hour). Similarly, costs to submit advance notice of departure data would be \$1.3 million, for a total cost for pilots to submit the required data elements of \$2.6 million annually. The cost for passengers to provide the data to the pilot to be entered into eAPIS would be approximately \$570,000 (920,000 arrivals and departures * 0.017 hours * \$37.20 per hour). Total costs for the eAPIS submissions would be \$3.2 million annually.

To estimate the costs of arriving earlier than customary, we again use the value of time of \$37.20 per hour. As noted previously, we assume that 301,000 pilots and

¹⁴ Federal Aviation Administration. 2005. **Economic Values for FAA Investment and Regulatory Decisions, A Guide**. Prepared by GRA, Inc. July 3, 2007. Table ES-1. Per the instructions of this guidance document (see pages 1-1 and 1-3), this estimate has not been adjusted for inflation.

passengers may choose to arrive 0.25 hours earlier than customary. This would result in a cost of approximately \$2.8 million for arrivals and \$2.8 million for departures, a total of \$5.6 million annually (301,000 individuals * 0.25 hours * \$37.20 per hour * 2).

Additionally, CBP estimates the potential costs to resolve issues with passengers that have been designated as “No Fly” based on the eAPIS process. While a law enforcement response is not required under this proposed rule, CBP estimates the costs for such a response in order to avoid underestimating the costs of this rule. For the purposes of this analysis, CBP estimates that on two occasions annually, a general aviation flight has a passenger that is designated “No Fly,” but through the resolution process is downgraded from “No Fly” and the entire traveling party continues on their flight. CBP assumes that four individuals (the pilot plus three passengers) would be affected by a one-hour delay to resolve the no-fly designation. CBP also assumes the resolution process will require 1 hour of law enforcement time at a TSA-estimated cost of \$62.43 per hour. The total annual costs for these incidents would be approximately \$422 [(four individuals * \$37.20 * 1 hour + 1 individual * \$62.43 * 1 hour) * two incidents].

CBP also estimates the potential costs for pilots and passengers who may be denied landing rights as a result of their eAPIS submission. For the purposes of this analysis, CBP estimates that once per year, a general aviation flight is denied landing rights. CBP again assumes that four individuals (the pilot plus three passengers) will be affected, but that the delay will be eight hours to coordinate a law enforcement response. CBP assumes that four law enforcement personnel will be involved in the investigation. The total annual costs for this incident would be approximately \$3,188 [(four individuals

* \$37.20 * 8 hours + 4 individuals * \$62.43 * 8 hours) * one incident]. CBP is seeking comment on the assumptions made for these incident responses.

The total annual cost of the proposed rule is expected to be \$8.8 million. Over 10 years, this would total a present value cost of \$66.0 million at a 7 percent discount rate (\$77.1 million at a 3 percent discount rate).

The primary impetus of this rule is the security benefit afforded by a more timely submission of APIS information. Ideally, the quantification and monetization of the beneficial security effects of this regulation would involve two steps. First, we would estimate the reduction in the probability of a successful terrorist attack resulting from implementation of the regulation and the consequences of the avoided event (collectively, the risk associated with a potential terrorist attack). Then we would identify individuals' willingness to pay for this incremental risk reduction and multiply it by the population experiencing the benefit. Both of these steps, however, rely on key data that are not available for this rule.

In light of these limitations, we conduct a “breakeven” analysis to determine what change in the reduction of risk would be necessary in order for the benefits of the rule to exceed the costs. Because the types of attack that could be prevented vary widely in their intensity and effects, we present a range of potential losses that are driven by casualty estimates and asset destruction. For example, the average general aviation aircraft is 3,384 pounds and carries an average of a little over four people (1 pilot and 3 passengers).¹⁵ Some general aviation aircraft, however, are much larger and carry many more people and thus could have potentially higher casualty losses and property damages

¹⁵ Federal Aviation Administration. 2005. **Economic Values for FAA Investment and Regulatory Decisions, A Guide**. Prepared by GRA, Inc. July 3, 2007. Table ES-1.

in the event of an incident. We use two estimates of a Value of a Statistical Life (VSL) to represent an individual's willingness to pay to avoid a fatality onboard an aircraft, based on economic studies of the value individuals place on small changes in risk: \$3 million per VSL and \$6 million per VSL.

Additionally, we present four attack scenarios. Scenario 1 explores a situation where only individuals are lost (no destruction of physical property). In this scenario, we estimate the losses if an attack resulted in 4 (average number of people on a general aviation aircraft—one pilot, three passengers) to 1,000 casualties but no loss of physical capital. We acknowledge that this scenario is not necessarily realistic because an attack that would result in 1,000 casualties would almost certainly also result in loss of physical assets; however, this scenario provides a useful high end for the risk reduction probabilities required for the rule to break even.

Scenario 2 explores a situation where individuals are lost and a lower-value aircraft is destroyed. The value of the aircraft lost, \$94,661, is based on the value from the FAA critical values study cited previously.¹⁶ This value is for an aircraft built prior to 1982, which is a substantial proportion (75 percent) of the general aviation fleet of aircraft.¹⁷ Scenario 3 explores a situation where individuals are lost and a higher-value aircraft is destroyed. The value of the aircraft lost is \$1,817,062 (aircraft built in 1982 and later).

¹⁶ Federal Aviation Administration. 2005. **Economic Values for FAA Investment and Regulatory Decisions, A Guide**. Prepared by GRA, Inc. July 3, 2007. Table ES-1. This estimate has not been adjusted for inflation.

¹⁷ Federal Aviation Administration. 2005. **Economic Values for FAA Investment and Regulatory Decisions, A Guide**. Prepared by GRA, Inc. July 3, 2007. Table 3-14.

Scenario 4 explores a situation where individuals are lost and substantial destruction of physical capital is incurred. In this scenario we again estimate individual lives lost but now consider a massive loss of physical capital (the 9/11 attack is an example of such an event).

Casualties are again estimated as before using the two VSL estimates. To value the loss of capital assets, we use a report from the Comptroller of the City of New York that estimated \$21.8 billion in physical capital destruction as a result of the 9/11 attacks on the World Trade Center.¹⁸ This report also estimates the “ripple effects” of the attack—the air traffic shutdown, lost tourism in New York City, and long-term economic impacts; however, we do not compare these secondary impacts to the direct costs of the rule estimated previously because we do not know the extent to which these losses are transfers versus real economic losses. In this analysis we compare direct costs to direct benefits to estimate the risk reduction required for the rule to break even.

Again, the impacts in these scenarios would be driven largely by the number of people aboard the aircraft and the size of the aircraft.

The annual risk reductions required for the proposed rule to break even are presented in Table 2 for the four attack scenarios, the two estimates of VSL, and a range of casualties. As shown, depending on the attack scenario, the VSL, and the casualty level, risk would have to be reduced less than 1 percent (Scenario 4, 1,000 casualties avoided) to 73.1 percent (Scenario 1, 4 casualties avoided) in order for the benefits of the rule to exceed the costs to break even.

¹⁸ Thompson, Jr., William C. Comptroller, City of New York. “One Year Later: The Fiscal Impact of 9/11 on New York City.” September 4, 2002.

Table 2: Annual Risk Reduction Required (%) for Net Costs to Equal Benefits
(annualized at 7 percent over 10 years)

Casualties Avoided	Scenario 1: Loss of Life Only	Scenario 2: Loss of Life and Aircraft (Low Value)	Scenario 3: Loss of Life and Aircraft (High Value)	Scenario 4: Loss of Life and Catastrophic Loss of Property
\$3M VSL				
4	73.1	72.6	63.5	< 1
10	29.3	29.2	27.6	< 1
100	2.9	2.9	2.9	< 1
1,000	0.3	0.3	0.3	< 1
\$6M VSL				
4	36.6	36.4	34.0	< 1
10	14.6	14.6	14.2	< 1
100	1.5	1.5	1.5	< 1
1,000	0.1	0.1	0.1	< 1

B. Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (RFA, See 5 U.S.C. 601-612). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, CBP consulted the Small Business Administration's guidance document for

conducting regulatory flexibility analysis. Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. We do not have information on the number of pilots and passengers traveling for business versus leisure or how many businesses, regardless of size, would be affected by the proposed requirements. Those private individuals who are flying for leisure, rather than business, would not be considered small entities because individuals are not considered small entities. Some of the affected pilots and passengers are flying for business purposes; however, we do not know if these businesses are small entities or not. This rule may thus affect a substantial number of small entities.

In any case, the cost to submit data to CBP through eAPIS would be, at most, approximately \$50 per submission (\$9.30 for the APIS submission; $\$9.30 * 3.3$ passengers + $\$9.30 * 1$ pilot for potential early arrival). CBP believes such an expense would not rise to the level of being a “significant economic impact.” We welcome comments on our assumptions. If we do not receive comments that demonstrate that the rule results in significant economic impacts, we may certify that this action does not have a significant economic impact on a substantial number of small entities during the final rule.

Comments regarding the analysis may be submitted by any of the methods described under the “Addresses” section of this document.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by

law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. § 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. This rule would not result in such an expenditure.

D. Executive Order 13132: Federalism

Executive Order 13132 requires CBP to develop a process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” Policies that have federalism implications are defined in the Executive Order to include rules that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” CBP has analyzed the proposed rule in accordance with the principles and criteria in the Executive Order and have determined that it does not have federalism implications or a substantial direct effect on the States. The proposed rule requires private aircraft arriving in the United States from a foreign location or departing the United States to a foreign port or location to comply with notice of arrival requirements, passenger manifest requirements, and

permission to land at landing rights airports. States do not conduct activities with which this rule would interfere. For these reasons, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that a regulation clearly identifies preemptive effects, effects on existing Federal laws and regulations, any retroactive effects of the proposal, and other matters. CBP has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. National Environmental Policy Act

CBP has evaluated this rule for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. § 4321 et seq.). CBP has determined that an environmental statement is not required, since this action is non-invasive and there is no potential impact of any kind. Record of this determination has been placed in the rulemaking docket.

G. Paperwork Reduction Act

There are two proposed collections of information in this document. The proposed collection is contained in 19 CFR 122.22. This information would be used by

CBP to further improve the ability of CBP to identify high-risk individuals onboard private aircraft so as to prevent terrorist acts and ensure aircraft and airport safety and security. The likely respondents and/or record keepers are individuals and businesses. Under § 122.22 a private aircraft pilot would be required to file an advance arrival manifest on all individuals via an electronic data interchange system approved by CBP no later than 60 minutes prior to the aircraft departing to the United States from a foreign port or location. Additionally, a private aircraft pilot would be required to file an advance departure manifest on all individuals onboard a private aircraft through an electronic data interchange system approved by CBP no later than 60 minutes prior to that aircraft departing from the United States to a foreign port or location. eAPIS is one of several CBP approved electronic data interchange systems that private aircraft pilots will use to transmit information about all of the individuals aboard an aircraft.

The collection of information encompassed within this proposed rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated Burden Requirements for Pilots of Private Aircraft Under § 122.22

Estimated annual reporting and/or recordkeeping burden: 70,000 hours

Estimated average annual burden per respondent/recordkeeper: 30 minutes (0.50) hours

Estimated number of respondents and/or recordkeepers: 140,000

Estimated annual frequency of responses: 2

Estimated Burden Requirements for Passengers

Estimated annual reporting and/or recordkeeping burden: 7820

Estimated reporting burden per respondent/or recordkeeping burden: 1 minute

Estimated number of respondents and/or recordkeepers: 460,000

Estimated annual frequency of responses: 1

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, D.C. 20503. Comments should be submitted within the timeframe that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

H. Privacy Statement

A Privacy Impact Assessment (PIA) for APIS was updated on August 8, 2007 and posted on the DHS website. In conjunction with the APIS Pre-departure final rule published in the **Federal Register** on August 23, 2007 (72 FR 48320), a System of Records Notice was published in the **Federal Register** on that same date (72

FR 48349). In light of the amendments to the regulations proposed in this document, CBP is in the process of updating the APIS PIA. Additionally, CBP and the DHS Privacy Office are currently reviewing the APIS SORN to determine if any amendments are needed to ensure privacy compliance for APIS. Accordingly, if it is determined that amendments are necessary, an update to the SORN will be published.

DHS is seeking comment on the privacy impacts of the expansion of the population that will be covered by this rule. Presently, the Advanced Passenger Information System (APIS) System of Records Notice (SORN) published in the **Federal Register** on August 23, 2007 (72 FR 48349) would cover this population. The APIS SORN currently covers the collection of APIS information in both the commercial and private aircraft context. Comments will be considered and addressed in the development of this final rule, additionally any updates to the APIS SORN required by the rule or DHS's analysis of the comments from this NPRM will be incorporated into the APIS SORN prior to the collection of personally identifiable information under the rule.

VI. SIGNING AUTHORITY

The signing authority for these amendments falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

VII. PROPOSED REGULATORY AMENDMENTS

LIST OF SUBJECTS IN 19 CFR PART 122

Air carriers, Aircraft, Airports, Reporting and recordkeeping requirements, Security measures.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, it is proposed to amend part 122 of title 19, Code of Federal Regulations (19 CFR part 122) as follows:

PART 122 - AIR COMMERCE REGULATIONS

1. The general authority citation for part 122 and the specific authority citations for sections 122.12, 122.14, 122.22, 122.23, 122.24, 122.26, 122.32, 122.61 and 122.154 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

2. Amend § 122.0 to read as follows:

§ 122.0 Scope.

(a) Applicability. The regulations in this part relate to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. They do not apply to Guam, Midway, American Samoa, Wake, Kingman Reef, Johnston Island, and other insular possessions of the United States not specified herein. They do apply to the U.S. Virgin Islands as stated in subpart N (§§ 122.41 through 122.144), and Cuba as stated in subpart O (§§ 122.151 through 122.158).

(b) Authority of Other Agencies. Nothing in this part is intended to divest or diminish authority and operational control that are vested in the FAA or any other agency, particularly with respect to airspace and aircraft safety.

3. Amend §122.12 by revising paragraph (c) to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) FAA rules; denial of permission to land.

(1) Federal Aviation Administration. International airports must follow and enforce any requirements for airport operations, including airport rules that are set out by the Federal Aviation Administration in 14 CFR part 91.

(2) Customs and Border Protection. CBP, based on security or other risk assessments, may limit the locations where aircraft entering the United States from a foreign port or place may land. Consistent with § 122.0(b) of this Title, CBP has the authority to deny permission to land in the United States, based upon security or other risk assessments.

(3) Commercial aircraft. Permission to land at an international airport may be denied to a commercial aircraft if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a, except in the case of emergency or forced landings.

(4) Private Aircraft. Permission to land at an international airport will be denied if the pilot of a private aircraft arriving from a foreign port or place fails to submit an electronic manifest and notice of arrival pursuant to § 122.22, except in the case of emergency or forced landings.

* * * * *

4. Revise § 122.14 to read as follows:

§ 122.14 Landing rights airports.

(a) Permission to land. Permission to land at a landing rights airport may be given as follows:

(1) Scheduled flight. The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the director of the port, or his representative, at the port nearest to which first landing is made.

(i) Additional flights, charters or changes in schedule--(A) Scheduled aircraft. If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the port director.

(ii) Additional or charter flight. If a carrier or charter operator wants to begin operating or to add flights, application shall be made to the port director for landing rights. All requests shall be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it shall be put in writing before or at the time of arrival.

(2) Private aircraft. The pilots of private aircraft are required to secure permission to land from CBP following transmission of the advance notice of arrival via an electronic data interchange system approved by CBP, pursuant to §122.22. Prior to departure as defined in section 122.22(a), from a foreign port or place, the pilot of a private aircraft must receive a message from CBP that landing rights have been granted for that aircraft at a particular airport.

(3) Other aircraft. Following advance notice of arrival pursuant to § 122.31, all other aircraft may be allowed to land at a landing rights airport by the director of the port of entry or station nearest the first place of landing.

(4) Denial or withdrawal of landing rights. Permission to land at a landing rights airport may be denied or permanently or temporarily withdrawn for any of the following reasons:

- (i) Appropriate and/or sufficient Federal Government personnel are not available;
- (ii) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;
- (iii) The entity requesting the landing rights has a history of failing to abide by appropriate instructions given by a CBP officer;
- (iv) Reasonable grounds exist to believe that applicable Federal rules and regulations pertaining to safety, including cargo safety and security, CBP, or other inspectional activities may not be adhered to;
- (v) The granting of the requested landing rights would not be in the best interests of the Government; or
- (vi) CBP has deemed it necessary to deny landing rights to an aircraft.

(5) Appeal of denial or withdrawal of landing rights for commercial scheduled aircraft as defined in 122.1(d). In the event landing rights are denied or subsequently permanently withdrawn by CBP, within 30 days of such decision, the affected party may file a written appeal with the Assistant Commissioner, Office of Field Operations, Headquarters.

(6) Emergency or forced landing. Permission to land is not required for an emergency or forced landing (covered under §122.35).

(b) Payment of expenses. In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft must pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§ 24.17 and 24.22(e) of this chapter).

* * * * *

5. Revise §122.22 to read as follows:

§ 122.22 Electronic manifest requirement for all individuals onboard private aircraft arriving in and departing from the United States; notice of arrival and departure information.

(a) Definitions. For purposes of this section:

Departure. “Departure” means the point at which the aircraft is airborne and the aircraft is en route directly to its destination.

Departure Information. “Departure Information” refers to the data elements that are required to be electronically submitted to CBP pursuant to paragraph (c)(4) of this section.

Pilot. “Pilot” means the individual(s) responsible for operation of an aircraft while in flight.

Travel Document. “Travel Document” means U.S. Department of Homeland Security approved travel documents.

United States. “United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(b) Electronic manifest requirement for all individuals onboard private aircraft in the U.S.; notice of arrival.

(1) General requirement. The private aircraft pilot is responsible for ensuring the notice of arrival and manifest information regarding each individual onboard the aircraft are transmitted to CBP. The pilot is responsible for submitting this information, but may authorize another party to submit the information on their behalf. All data must be transmitted to CBP by means of an electronic data interchange system approved by CBP and must set forth the information specified in this section. All data pertaining to the notice of arrival for the aircraft and the manifest data regarding each individual onboard the aircraft must be transmitted at the same time via an electronic data interchange system approved by CBP.

(2) Time for submission. The private aircraft pilot is responsible for ensuring that the information specified in paragraphs (b)(3) and (b)(4) of this section is transmitted to CBP:

- (i) No later than 60 minutes prior to departure of the aircraft; or
- (ii) For flights not originally destined to the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration that the carrier was not equipped to make the transmission and the circumstances of the emergency situation.

(3) Manifest data required. For private aircraft arriving in the United States the following identifying information for each individual onboard the aircraft must be submitted:

- (i) Full name (last, first, and, if available, middle);
- (ii) Date of birth;

- (iii) Gender (F=female; M=male);
- (iv) Citizenship;
- (v) Country of residence;
- (vi) Status on board the aircraft;
- (vii) Travel document type (e.g. P=passport; A=alien registration card);
- (viii) Passport number, if a passport is required or approved DHS travel document;
- (ix) Passport/Travel document country of issuance;
- (x) Passport (or other DHS approved travel document) expiration date;
- (xi) Alien registration number, where applicable;
- (xii) Address while in the United States (number and street, city, state, and zip code). This information is required for all travelers and crew onboard the aircraft;
- (xiii) Redress number, if available.

(4) Notice of arrival. The advance notice of arrival must include the following that applies to the aircraft:

- (i) Aircraft registration number;
- (ii) Type of Aircraft;
- (iii) Call sign (if available);
- (iv) Decal number;
- (v) Place of last departure;
- (vi) Date of aircraft arrival;
- (vii) Estimated time of arrival;
- (viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended U.S. airport of first landing (as listed in 122.24 if applicable, unless an exemption has been granted under 122.25, or the aircraft was inspected by CBP Officers in the U.S. Virgin Islands);

(x) Owner/Lessee's name (last, first, and, if available, middle);

(xii) Owner/Lessee's address (number and street, city, state, zip code, country, telephone no., fax no., and email address);

(xii) Pilot/Private aircraft pilot name;

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip code, country, telephone no., fax no., and email address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (last, first, and if available, middle);

(xvii) Operator street address (number and street, city, state, zip code, country, telephone no., fax no., and email address);

(xviii) Transponder code (beacon number);

(xix) Color;

(xx) Complete Itinerary (foreign airports landed at within past 24 hours prior to landing in United States);

(xxi) 24-hour Point of contact (e.g., broker, dispatcher, repair shop) name and phone number.

(5) Reliable facilities. When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing must be made at a foreign place where notice can be sent prior to coming into the United States.

(6) Permission to depart. Prior to departure from the foreign port or place, the pilot of a private aircraft must receive a message from DHS approving departure for the United States, or following any instructions contained therein prior to departure.

(7) Changes to manifest. The private aircraft pilot is obligated to make necessary changes to the arrival manifest after transmission of the manifest to CBP. If changes are necessary, an updated and amended manifest must be resubmitted. If a subsequent manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must resubmit the arrival manifest and receive approval from CBP for the amended manifest containing the added or amended information before allowing the aircraft to depart the foreign location, or the aircraft may be, as appropriate, denied clearance to depart, diverted from arriving in the United States, or denied permission to land in the United States. If a subsequent, amended manifest is submitted by the pilot, any approval to depart the foreign port or location previously granted by CBP as a result of the original manifest's submission is invalid.

(c) Electronic manifest requirement for all individuals onboard private aircraft departing from the United States; departure information.

(1) General requirement. The private aircraft pilot is responsible for ensuring that information regarding private aircraft departing the United States, and manifest data for all individuals onboard the aircraft is timely transmitted to CBP. The pilot is responsible for submitting this information, but may authorize another party to submit the information on their behalf. All data must be transmitted to CBP by means of an electronic data interchange system approved by CBP, and must set forth the information specified in paragraph (c)(3). All data

pertaining to the aircraft, and all individuals onboard the aircraft must be transmitted at the same time.

(2) Time for submission. The private aircraft pilot must transmit the electronic data required under paragraphs (c)(3) and (c)(4) of this section to CBP no later than 60 minutes prior to departing the United States.

(3) Manifest data required. For private aircraft departing the United States the following identifying information for all individuals onboard the aircraft must be submitted:

- (i) Full name of all individuals on board the aircraft (last, first, and, if available, middle);
- (ii) Date of birth;
- (iii) Gender (F=female; M=male);
- (iv) Citizenship;
- (v) Country of residence;
- (vi) Status on board the aircraft;
- (vii) Travel document type (e.g. P=passport; A=alien registration card);
- (viii) Passport number, if a passport is required, or approved DHS travel document;
- (ix) Passport/Travel document country of issuance, if such a document is required;
- (x) Passport/Travel document expiration date, if such a document is required;
- (xi) Alien registration number, where applicable;

(xii). Address while in the United States (number and street, city, state, and zip code). This information is required for all travelers and crew onboard the aircraft;

(xiii) Redress number, if available.

(4) Notice of Departure information. For private aircraft departing the United States, the following departure information must be submitted:

- (i) Aircraft registration number;
- (ii) Type of Aircraft;
- (iii) Call sign (if available);
- (iv) Decal number;
- (v) Place of last departure;
- (vi) Date of aircraft departure;
- (vii) Estimated time of departure;
- (viii) Estimated time and location of crossing U.S. border/coastline;
- (ix) Name of intended foreign airport of first landing;
- (x) Owner/Lessee's name (last, first, and, if available, middle);
- (xi) Owner/Lessee's street address (number and street, city, state, zip code, country, telephone no., fax no., and email address);
- (xii) Pilot/Private aircraft pilot name (last, first and, if available, middle);
- (xiii) Pilot license number;
- (xiv) Pilot street address (number and street, city, state, zip code, country, telephone no., fax no., and email address);
- (xv) Country of issuance of pilot's license;

- (xvi) Operator name (last, first, and if available, middle):
- (xvii) Operator street address (number and street, city, state, zip code, country, telephone no., fax no., and email address);
- (xviii) 24-hour Point of contact (e.g., broker, dispatcher, repair shop) name and phone number;
- (xix) Transponder code (beacon number);
- (xx) Color;
- (xxi) Complete itinerary (intended foreign airport destinations for 24 hours following departure).

(5) Permission to depart. Prior to departure from the foreign port or place, the pilot of a private aircraft must receive a message from DHS approving departure for the United States, or following any instructions contained therein prior to departure. (6)

Changes to manifest. The private aircraft pilot is obligated to make necessary changes to the manifest data after transmission of the manifest to CBP. If changes are necessary, an updated and amended manifest must be resubmitted.

If a subsequent manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must resubmit the arrival manifest and receive approval from CBP for the amended manifest containing the added or amended information before allowing the aircraft to depart the U.S. location, or the aircraft may be, as appropriate, denied clearance to depart from the United States. If a subsequent, amended manifest is submitted by the pilot, any clearance previously granted by CBP as a result of the original manifest's submission is invalid.

7. Amend §122.23 by revising the section heading and the heading of paragraph (a), the introductory text of paragraph (a)(1) and paragraph (b). The revisions read as follows:

§ 122.23 Certain aircraft arriving from areas south of the U.S.

(a) Application. (1) This section sets forth particular requirements for certain aircraft arriving from south of the United States. This section is applicable to all aircraft except:

* * *

(2) * * * *

(b) Notice of arrival. All aircraft described in paragraph (a) of this section arriving in the Continental United States via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of "United States" in 122.1(1)) from Puerto Rico (if conducting flight rules), must furnish a notice of intended arrival. Private aircraft must transmit an advance notice of arrival as set forth in §122.22 of this part. Other than private aircraft, all aircraft to which this section applies must communicate to CBP notice of arrival at least one hour before crossing the U.S. coastline by telephone, radio, other method or the Federal Aviation Administration in accordance with paragraph (c) of this section.

8. Amend §122.24 by revising paragraph (a), revising the heading to paragraph (b) and removing all of the text of paragraph (b) except for the table. The revisions read as follows:

§ 122.24 Landing requirements for certain aircraft arriving from areas south of U.S.

(a) In general. Certain aircraft arriving from areas south of the United States that are subject to 122.23 are required to furnish a notice of intended arrival in compliance with §122.23. Subject aircraft must land for CBP processing at the nearest designated airport to the border or coastline crossing point as listed under paragraph (b) unless exempted from this requirement in accordance with §122.25. In addition to the requirements of this section, pilots of aircraft to which §122.23 is applicable must comply with all other landing and notice of arrival requirements. This requirement shall not apply to those aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico or if the aircraft was inspected by CBP officers in the U.S. Virgin Islands.

(b) List of designated airports.

* * *

9. Amend § 122.25 to replace the term “private aircraft,” wherever it appears with the term “an aircraft subject to 122.23.”

10. Revise §122.26 to read as follows:

§ 122.26 Entry and clearance.

Private aircraft, as defined in §122.1(h) arriving in the United States, are not required to formally enter. No later than 60 minutes prior to departure from the United States to a foreign location, manifest data for all individuals onboard a private aircraft and departure information must be submitted as set forth in §122.22(c). Private aircraft must not depart the United States to travel to a foreign location until CBP confirms receipt of the

appropriate manifest and departure information as set forth in §122.22(c), and grants electronic clearance via electronic mail or telephone.

11. Revise § 122.31 to read as follows:

§122.31 Notice of Arrival.

(a) Application. Except as provided in paragraph (b) of this section, all aircraft entering the United States from a foreign area shall give advance notice of arrival.

(b) Exceptions for scheduled aircraft of a scheduled airline.

Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule must have been filed with the port director for the airport where the first landing is made.

(c) Giving notice of arrival--(1) Procedure.

(i) Private aircraft. The pilot of a private aircraft must give advance notice of arrival in accordance with § 122.22 of this part.

(ii) Aircraft arriving from Cuba. Aircraft arriving from Cuba must follow the advance notice of arrival procedures set forth in § 122.154 in subpart O of this part.

(iii) Certain aircraft arriving from areas south of the United States. Certain aircraft arriving from areas south of the United States (other than Cuba) must follow the advance notice of arrival procedures set forth in § 122.23 of this part.

(iv) Other aircraft. The commander of an aircraft not otherwise covered by paragraphs (c)(i), (c)(ii) and (c)(iii) of this section must give advance notice of arrival as set forth in paragraph (d) of this section. Notice shall be given to the port director at the place of first landing, either:

(A) Directly by radio, telephone, or other method; or

(B) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) Reliable facilities. When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing shall be made at a place where notice can be sent prior to coming into the U.S.

(d) Contents of notice. The advance notice of arrival required by aircraft covered in paragraph (c)(iv) of this section must include the following information:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by CBP;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) Time of notice. Notice of arrival as required pursuant to paragraph (c)(iv) of this section must be furnished far enough in advance to allow inspecting CBP officers to reach the place of first landing of the aircraft.

(f) Notice of other Federal agencies. When advance notice is received, the port director shall inform any other concerned Federal agency.

12. Revise §122.32 to read as follows:

§122.32 Aircraft required to land.

(a) Any aircraft coming into the U.S., from an area outside of the U.S., is required to land, unless it is denied permission to land in the U.S. by CBP pursuant to 122.12(c), or is exempted from landing by the Federal Aviation Administration.

(b) Conditional permission to land. CBP has the authority to limit the locations where aircraft entering the U.S. from a foreign area may land. As such, aircraft must land at the airport designated in their APIS transmission unless instructed otherwise by CBP.

13. In §122.61 revise the introductory text of paragraph (a) to read as follows:

§122.61 Aircraft required to clear.

(a) Private aircraft leaving the United States for a foreign area are required to clear as set forth in §122.26. All other aircraft, except for public aircraft, leaving the United States for a foreign area, are required to clear if:

* * * * *


14. Amend 122.154 by adding paragraph (d) below, and revising paragraph (a) to read as follows:

§122.154 Notice of Arrival.

(a) Application. All aircraft entering the U.S. from Cuba shall give advance notice of arrival, unless it is an Office of Foreign Assets Control (OFAC) approved, scheduled commercial aircraft of a scheduled airline.

* * * * *

(d) Private Aircraft. In addition to these requirements, private aircraft must also give notice of arrival pursuant to section 122.22 of this part.



Michael Chertoff
Secretary